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DECISION



**THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D. C. 20540**

FILE: B-191203

DATE: May 11, 1978

**MATTER OF: Harold W. Harper - Reimbursement for Real Estate
Expenses - Time Limitation**

DIGEST: Department of Agriculture employee who transferred from Holbrook, Arizona, to Albuquerque, New Mexico, and reported for duty on May 27, 1974, may not be reimbursed for sale of former residence since settlement did not occur until March 15, 1977, more than 2 years after date of reporting. Time limitation imposed by FTR para. 2-6.1e has the force and effect of law and may not be waived in any individual case.

This action is in response to an appeal by Mr. Harold W. Harper, an employee of the U.S. Department of Agriculture, Forest Service, of a settlement issued by our Claims Division on December 5, 1977, disallowing his claim for reimbursement of real estate expenses incurred in connection with the sale of his residence incident to a permanent change of station.

As a result of the consolidation of the administration of the Apache and Sitgreaves National Forests, Mr. Harper was transferred from Holbrook, Arizona, to Albuquerque, New Mexico, where he reported for duty on May 27, 1974. On May 9, 1975, a purchaser for his home at his old duty station offered to enter into a lease-purchase agreement. The settlement, however, did not occur until March 15, 1977, as the buyer experienced some unexpected problems concerning the financing of the purchase.

Reimbursement to Federal employees of certain expenses incurred in connection with residence transactions incident to a transfer of duty station is governed by section 5724(a)(4) of title 5, United States Code.

By Executive Order No. 11609, July 22, 1971, the Presidential authority to issue regulations under 5 U.S.C. 5724(a) was delegated to the General Services Administration (GSA). Pursuant to this authority, the GSA promulgated paragraph 2-6.1 of the Federal Travel Regulations (FTR) (FPMR 101-7, May 1973) which governs time limitations for reimbursement of expenses incurred in connection with real estate transactions and provides in pertinent part that:

B-191203

" * * * To the extent allowable under this provision, the Government shall reimburse an employee for expenses required to be paid by him in connection with the sale of one residence at his old official station * * *; Provided, That:

* * * * *

"e. Time limitation. The settlement dates for the sale and purchase or lease termination transactions for which reimbursement is requested are not later than 1 (initial) year after the date on which the employee reported for duty at the new official station. Upon an employee's written request this time limit for completion of the sale and purchase or lease termination transaction may be extended by the head of the agency or his designee for an additional period of time, not to exceed 1 year, regardless of the reasons therefore so long as it is determined that the particular residence transaction is reasonably related to the transfer of official station."

Paragraph 2-6.2e of the FTR also provides in pertinent part that:

"Losses due to failure to sell a residence at the old official station at the price asked, or at its current appraised value, or at its original cost * * * are not reimbursable."

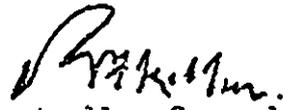
As both of the above-quoted regulations were promulgated pursuant to the statutory authority of 5 U.S.C. 5724(a) (1970) they have the force and effect of law and, therefore, may not be waived or modified in any individual case. This is true regardless of the presence of extenuating circumstances. See 49 Comp. Gen. 145, 147 (1969). While it is unfortunate that the sale of Mr. Harper's residence was delayed, the fact that the delay may have been in part due to Government acts affecting bank lending rates and the

B-191203

availability of mortgage money does not alter the fact that the settlement did not occur until March 15, 1977, more than 2 years after Mr. Harper reported to his new duty station and beyond the maximum time limit permitted by the regulations.

Intertwined with claimant's request for relief is the allegation that preferential treatment was given to his peers as they were reimbursed for their transfer costs. Our Office has learned that those of claimant's peers who were reimbursed for their transfer costs were not accorded preferential treatment but were reimbursed because their claims were filed within the 2-year time limitation established by the appropriate regulations.

Accordingly, the action taken by the Claims Division of disallowing Mr. Harper's claim is sustained. Concerning Mr. Harper's request as to rights of further appeal, he is advised that the decisions of the Comptroller General of the United States rendered on claims settled by the General Accounting Office are conclusive upon the Executive Branch of the Government. See 31 U.S.C. 74. Independent of the jurisdiction of the General Accounting Office, however, the United States Court of Claims and the United States District Courts have jurisdiction to consider certain claims against the Government if suit is filed within 6 years after the claim first accrued. See 28 U.S.C. 1346(a)(2), 1491, 2401, and 2501.


Deputy Comptroller General
of the United States